

1 States on construction projects funded under the Davis Bacon Act, 40 U.S.C. § 3141, as well as the
 2 public contracting laws of the States of California, Arizona, and Nevada. In order to accomplish
 3 its goals, CANDO routinely requests information related to federally and state funded construction
 4 projects in order to ensure workers on the project are being paid at the prevailing wage rate and are
 5 receiving the fringe benefits specified in the applicable Davis Bacon wage determination.

6 4. Defendant Department of Health and Human Services (“DHHS”) is a Department
 7 of the Executive Branch of the United States Government and is an agency within the meaning of 5
 8 U.S.C. § 552(f).

9 5. Defendant Michael O. Leavitt is the Secretary of DHHS and is responsible for
 10 DHHS compliance with the laws of the United States and regulations promulgated thereunder,
 11 including the laws and regulations at issue in this case.

12 6. At a date unknown in 2006 or 2007, DHHS awarded contract HHSI
 13 1612007000014C to B & M Cillessen Construction Company for the expansion and renovation of
 14 the Navajo Area Indian Health Service Comprehensive Health Facility located at Chinle, Arizona
 15 (“Chinle Project”), a construction project funded by the DHHS and/or the United States
 16 Government, subject to the provisions of the Davis Bacon Act.

17 7. By letter to Defendant DHHS sent on July 23, 2007, CANDO requested under the
 18 FOIA, the following documents related to the Chinle Project:

- 19 • A copy of the list of subcontractors or a copy of the SF 1413
 20 subcontractor listing forms as submitted by the general
 21 contractor...,
- 22 • The name, address, and telephone number of the labor
 23 compliance administrator..., and
- The proposed project completion date.

24 The FOIA request submitted by CANDO was in conformance with the requirements for such
 25 requests as set forth by the DHHS on its website. The DHHS acknowledged receipt of CANDO’s
 26 request and assigned the request Case Number 07-068. A true and correct copy of the July 2007
 27 letter is attached hereto as Exhibit 1 and incorporated herein by reference.

28 8. By letter to the DHHS sent via certified mail return receipt requested on October 29,

1 2007, CANDO made a second request for documents related to the Chinle Project, seeking the
2 same documents requested in the letter of July 23, 2007. The second request submitted by
3 CANDO under the FOIA was in conformance with DHHS standards and specified that it was the
4 second request for such documents. A true and correct copy of the October 2007 letter is attached
5 hereto as Exhibit 2 and incorporated herein by reference.

6 9. By letter to the DHHS sent via certified mail return receipt requested on December
7 26, 2007, CANDO made a third request for documents related to the Chinle Project, seeking the
8 same documents requested in the letter of July 23, 2007. The third request submitted by CANDO
9 under the FOIA was in conformance with DHHS standards and specified that it was the third
10 request for such documents. A true and correct copy of the December 2007 letter is attached
11 hereto as Exhibit 3 and incorporated herein by reference.

12 10. On or around February 22, 2008, the FOIA agent handling the request advised
13 CANDO via electronic mail that she was waiting to obtain responsive information from the office
14 that maintains the records. On or around March 28, 2008, CANDO followed up on the request via
15 electronic mail stating that the requested information had not yet been provided, some nine months
16 after the original request.

17 11. On or around July 29, 2008, CANDO's counsel submitted correspondence to the
18 FOIA Officers at the DHHS outlining CANDO's efforts to obtain documents on the Chinle Project
19 and requested the documents sought by CANDO be produced by August 19, 2008. The July
20 correspondence also notified the DHHS that CANDO considered its administrative remedies
21 exhausted. The July correspondence was sent to the DHHS via certified mail return receipt
22 requested, and was received by the DHHS FOIA office on August 4, 2008. As of the date of this
23 complaint, CANDO has not received a response to its FOIA request. A true and correct copy of
24 the July 2008 letter is attached hereto as Exhibit 4 and incorporated herein by reference.

25 12. Defendants have unreasonably and wrongfully withheld documents and information
26 on the Chinle Project from Plaintiff.

27 13. Defendants' failure to timely respond to CANDO's request for documents and
28 information on the Chinle Project violates the FOIA, 5 U.S.C. § 522(a)(6)(A)(i).

1 WHEREFORE, CANDO prays that this Court:

- 2 1. Order Defendants to immediately disclose the requested records and make copies
3 available to Plaintiff;
- 4 2. Provide for expeditious proceedings in this action;
- 5 3. Award Plaintiff reasonable attorney fees and costs incurred in this action pursuant to
6 5 U.S.C. § 552(a)(4)(E); and
- 7 4. Grant such other relieve as the Court deems just and proper.

8 Dated: October 9, 2008

9
10 WEINBERG, ROGER & ROSENFELD
A Professional Corporation

11 By: s/ James Rutkowski
12 DAVID A. ROSENFELD
13 JAMES RUTKOWSKI
ROBERTA D. PERKINS
Attorneys for Plaintiff

14 110966/508019

July 23, 2007

Dept. of Health & Human Services
FOIA Coordinator
Attn: Ms. Janet Ingersoll
12300 Twinbrook Metro Plaza #450
Rockville, MD 20852



RE: Comprehensive Health Facility Expansion/Renovations
HHSI 161200700014C
Chinle, AZ
GC: B & M Cillessen Construction Co.
Farmington, NM

FREEDOM OF INFORMATION ACT REQUEST


Dear Ms. Ingersoll:

Please accept this request for a copy of the following documents in accordance with 5 U.S.C. 1050 Section 552 of the Freedom of Information Act:

1. A copy of the list of subcontractors or a copy of the SF 1413 sub contractor listing forms as submitted by the general contractor for work on the above referenced contract.
2. The name, address and telephone number of the labor compliance administrator associated with the above referenced project.
3. The proposed project completion date.

If you should deny my request in whole or in part, please advise me as to the appropriate regulations and my method for appealing the denial. If there are any fees required for the copying of these public records, *please advise me as to the amount of cost prior to the fulfilling of this request.* If you should have any questions, please contact me at your convenience.

Sincerely,


Michele R. Justice
Director



October 29, 2007

Dept. of Health & Human Services
FOIA Coordinator
Attn: Ms. Janet Ingersoll
12300 Twinbrook Metro Plaza #450
Rockville, MD 20852

Via Certified Return Receipt

RE: Comprehensive Health Facility Expansion/Renovations
HHSI 161200700014C
Chinle, AZ
GC: B & M Cillessen Construction Co.
Farmington, NM

**FREEDOM OF INFORMATION ACT REQUEST
SECOND REQUEST**

Dear Ms. Ingersoll:

On July 23, 2007 I submitted a Freedom of Information Act Request to you regarding the project as referenced above (copy enclosed). To date, I have not received a response to that request. Please accept this *second* request for a copy of the following documents in accordance with 5 U.S.C. 1050 Section 552 of the Freedom of Information Act:

1. A copy of the list of subcontractors or a copy of the SF 1413 sub contractor listing forms as submitted by the general contractor for work on the above referenced contract.
2. The name, address and telephone number of the labor compliance administrator associated with the above referenced project.
3. The proposed project completion date.

If you should deny my request in whole or in part, please advise me as to the appropriate regulations and my method for appealing the denial. If there are any fees required for the copying of these public records, *please advise me as to the amount of cost prior to the fulfilling of this request.* If you should have any questions, please contact me at your convenience.

Sincerely,

Michele R. Justice
Director

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature X <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>1. Article Addressed to: Dept HHS FOIA office Ms. Janet Ingerson 12300 Twinbrook Metropk. #450 Rockville, MD 20852</p>		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. </p>	
<p>2. Article Number (Transfer from service label) 7007 0220 0004 2113 6191</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	

PS Form 3811, February 2004 Domestic Return Receipt 105585-02-M-1540

NOV. 3, 2007

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature X <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>1. Article Addressed to: DHHS Janet Ingerson 12300 Twinbrook Metropk. #450 Rockville, MD 20852</p>		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. </p>	
<p>2. Article Number (Transfer from service label) 7007 0220 0004 2113 6146</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	

PS Form 3811, February 2004 Domestic Return Receipt 105585-02-M-1540

December 26, 2007

Dept. of Health & Human Services
FOIA Coordinator
Attn: Ms. Janet Ingersoll
12300 Twinbrook Metro Plaza #450
Rockville, MD 20852



Via Certified Return Receipt

RE: Comprehensive Health Facility Expansion/Renovations
HHSI 161200700014C
Chinle, AZ
GC: B & M Cillessen Construction Co.
Farmington, NM

FREEDOM OF INFORMATION ACT REQUEST
THIRD REQUEST

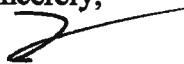
Dear Ms. Ingersoll:

On July 23, 2007 I submitted a Freedom of Information Act Request to you regarding the project as referenced above (copy enclosed) and again on October 29, 2007 I submitted a second request for the public documents. To date, I have not received a response to that request. Please accept this *third* request for a copy of the following documents in accordance with 5 U.S.C. 1050 Section 552 of the Freedom of Information Act:

1. A copy of the list of subcontractors or a copy of the SF 1413 sub contractor listing forms as submitted by the general contractor for work on the above referenced contract.
2. The name, address and telephone number of the labor compliance administrator associated with the above referenced project.
3. The proposed project completion date.

If you should deny my request in whole or in part, please advise me as to the appropriate regulations and my method for appealing the denial. If there are any fees required for the copying of these public records, *please advise me as to the amount of cost prior to the fulfilling of this request.* If you should have any questions, please contact me at your convenience.

Sincerely,


Michele R. Justice
Director

Enclosures (2)

U.S. Postal ServiceTM
CERTIFIED MAILTM RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com.

OFFICIAL USE

Postage	\$.41	Postmark Here
Certified Fee	2.65	
Return Receipt Fee (Endorsement Required)	2.15	
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 5.21	

Sent to: *DHHS Janet Irgensol*
 Street, Apt. No.,
 or PO Box No. *12300 Turnbroke Metro Pk #450*
 City, State, ZIP+4[®] *Rockville, MD 20852*

PS Form 3811, April 1, 2004 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
DHHS
Janet Irgensol
12300 Turnbroke Metro Pk #450
Rockville, MD
20852

2. Article Number
 (Transfer from service label) *7007 0220 0004 2113 6146*

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent
☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below ☐ No

3. Service Type
☒ Certified Mail ☐ Registered Mail
☐ Insured Mail ☐ Restricted Receipt for Merchandise
☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

STEWART WEINBERG
DAVID A. ROSENFELD
WILLIAM A. SOKOL
VINCENT A. HARRINGTON, JR.
W. DANIEL BOONE
BLYTHE MICKELSON
BARRY E. HINKLE
JAMES RUTKOWSKI
SANDRA RAE BENSON
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KERRIANNE R. STEELE
ANA M. GALLEGOS
GARY P. PROVENCHER

PATRICIA M. GATES, Of Counsel
ROBERTA D. PERKINS, Of Counsel
RICHARD T. DRURY, Of Counsel

* Also admitted in Arizona
** Admitted in Hawaii
*** Also admitted in Nevada
**** Also admitted in Illinois

July 29, 2008

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Janet Ingersoll, FOIA Coordinator
801 Thompson Avenue (TMP 450)
Rockville, MD 20852

Re: Freedom of Information Act Request
Comprehensive Health Facility Expansion/Renovation, Chinle, AZ
Contract No. HHSI 161200700014C
FOIA Case No. 07-068

Dear Ms. Ingersoll:

This office represents the California Arizona Nevada District Organization (CANDO) Contract Compliance Program. CANDO's Administrator, Michele Justice, has asked us to take action regarding the failure to comply with CANDO's requests for information on the above referenced project under the Freedom of Information Act. We submit this letter in a good faith attempt to obtain compliance and avoid litigation.

By way of background, CANDO is a non-profit labor-management compliance program. CANDO's mission is to ensure compliance with the wage and hour laws of the United States, California, Nevada, and Arizona. This mission is accomplished by requesting, receiving, and auditing the certified payroll records of subcontractors performing work in certain trades on public works jobs to ensure workers on the project are being paid at the prevailing wage rate and are receiving the fringe benefits specified in the applicable Davis-Bacon wage determination.

CANDO submitted its original FOIA request regarding the above referenced project over a year ago, on July 23, 2007, seeking the following information and documents:

- A copy of the list of subcontractors and/or the SF 1413 subcontractor listing forms;
- The name, address, and telephone number of the labor compliance administrator on the project; and
- The proposed completion date.

July 29, 2008

Janet Ingersoll, FOIA Coordinator

Page 2

When there was no response to the request, follow up communications were undertaken. On or around October 29, 2007, a second letter requesting the same documents was sent. A third letter was sent on December 26, 2007, to which no response was provided. On February 22, 2008, Ms. Justice discussed the request with Nina Argent, who advised her that she had contacted the office that maintains the documents and hoped to receive a response in the near future. On March 28, 2008, Ms. Justice again contacted Ms. Argent looking for the responsive documents. To date, there has been no response to CANDO's FOIA request.

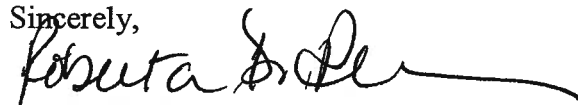
As the FOIA officer, I am sure you know that FOIA requires a federal agency to make determinations of requests for information within twenty (20) working days from the date of receipt of the request. The 20-day time period with respect to CANDO's requests has long since expired. At this point CANDO considers its administrative remedies to be exhausted.

CANDO would prefer to resolve this matter with a voluntary production of the records rather than by way of an action in the United States District Court seeking to compel compliance with FOIA. As previously indicated, CANDO is willing to pay the reasonable costs of reproduction of the records.

While CANDO would prefer to obtain the records without the necessity of litigation, we have been authorized to file an action in the United States District Court to compel compliance with the FOIA request. If the requested documents have not been produced to CANDO within ten (10) days of the date of receipt of this letter, or by August 19, 2008, we will file a complaint. Please provide me with copies of any correspondence you send to CANDO regarding the FOIA requests.

Should you have any questions or comments regarding CANDO's requests or the matters raised in this letter, please feel free to contact me. If you need additional information regarding the scope of the documents requested, please contact Ms. Justice at (623) 393-8744.

Sincerely,



Roberta D. Perkins

RDP/jys

cc: Michele Justice, CANDO

110966/501090

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>1. Article Addressed to:</p> <p>Janet Ingersoll, FOIA Coordinator 801 Thompson Avenue (TMP 450) Rockville, MD 20852</p>		<p>A. Signature X</p> <p>B. Receiver's (Printed Name)</p> <p>C. Date of Delivery AUG 04 2008</p>	
<p>2. Article Number (Transfer from service)</p> <p>7003 3110 0004 5584 4177</p>		<p>3. Delivery Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input checked="" type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input checked="" type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	